



506.39083VX1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: KINO, et al  
Serial No.: 10/024,190  
Filed: December 21, 2001  
For: METHOD FOR PRODUCING L-AMINO ACIDS BY  
FERMENTATION  
Group: 1651  
Examiner: H. Lilling

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RESPONSE TO RESTRICTION

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

August 26, 2003

Sir:

In response to the Office Action dated July 1, 2003, 2001, Applicants hereby  
elect **Group I, Claim 8**, drawn to a microorganism belonging to the genus  
Escherichia having the ability to produce L-histidine and having a resistance to  
novobiocin, the group being classified in class 435, subclass 252.8. The election is  
made with traverse, for the reasons given below.

It is respectfully submitted that the Examiner is in error in alleging that the  
inventions as set forth in the Office Action are so independent and distinct as to  
require a restriction. In particular, the Examiner is in error in alleging that Inventions I  
and II are separate and distinct on the alleged basis that Invention II is drawn to  
mutated strains whereas Invention I is drawn to non-mutated strains. In fact, Claim 8  
(designated by the Examiner as invention I and classified in class 435, subclass

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252.8) contains no limitation to exclude mutated strains, and Claim 8 is therefore drawn to both mutated and non-mutated strains. Further, the Examiner is in error in alleging that Invention II (Claims 10, 11, 15 and 16) and Invention III (Claims 12) would be separately classified in class 435, subclass 252.33. Subclass 252.33 is a subclass of transformants, that is, microorganisms that contain recombinant DNA or a vector or a foreign or exogenous gene. A mutant microorganism, on the other hand, is a microorganism carrying a genetic change that may have arisen from natural causes, chemical mutagens or ionizing radiation. (A page from Coombs, ed., Macmillan Dictionary of Biotechnology, The Macmillan Press Ltd, 1986 showing the definition of "mutation", is attached.) A mutant of a microorganism is therefore clearly different from a transformant. A mutant *Escherichia* is still considered to be an *Escherichia* microorganism and should be classified under subclass 252.8, the same as a non-mutated *Escherichia*.

Further, the specific mutated strain NTG mutant *Escherichia* strains set forth in Claim 14 should also be classified under subclass 252.8. As shown in Tables 1 and 2 of the present specification, *E. coli* H-9342 and *E. coli* H-9343 are both resistant with 1 g/l novobiocin and can produce 15.7 g/l or more of L-histidine. Accordingly, it is respectfully submitted that the microorganisms of Invention IV (Claim 14) are in the scope of Invention I (Claim 8).

It is therefore respectfully submitted the subject matter of all the claims is sufficiently related so that a thorough search for the subject matter of any one group of claims would encompass a search for the subject matter for the remaining claims and such a thorough search would not place an undue burden on the Examiner.

In order to avoid unnecessary delay and expense to applicants and

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duplication of examination by the Patent and Trademark Office, withdrawal of the  
restriction requirement is requested.

Kindly charge any additional fees due, or credit overpayment of fees, to  
Deposit Account No. 01-2135 (506.39083VX1).

Respectfully submitted,  
ANTONELLI, TERRY, STOUT & KRAUS



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Attachment: title pages and page 206  
of Coombs, ed., Macmillan Dictionary  
of Biotechnology, The Macmillan  
Press Ltd, 1986